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Supreme Court, U.S.
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No. 02-5664

In The

Supreme Court of the United States

DR. CHARLES THOMAS SELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the district court must consider the effects of involuntary medication on a defendant's right to a fair trial prior to ordering the involuntary medication of defendant?

INTEREST OF AMICUS[1]

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the mission of America's criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct. A professional bar association founded in 1958, NACDL's more than 10,400 direct members – and more than 80 state and local affiliate organizations with another 28,000 members – include private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors, and judges committed to preserving fairness within America's criminal justice system. The America Bar Association recognizes NACDL as an affiliate organization with full representation in its House of Delegates.

NACDL promotes study and research in the field of criminal law to disseminate and advance knowledge of the law in the area of criminal practice. NACDL seeks to defend individual liberties guaranteed by the Bill of Rights and has a keen interest in ensuring that legal proceedings are handled in a proper and fair manner. Among NACDL's objectives is promotion of the proper administration of justice. In furtherance of that objective, over the last

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[1] Pursuant to this Court's Rule 37.2(a), letters of consent from both parties to the filing of this brief have been filed with the Clerk. Pursuant to this Court's Rule 37.6, counsel represent that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than amicus, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

decade, NACDL has filed approximately ten *amicus* briefs per year with this Court on criminal justice related issues.

SUMMARY OF THE ARGUMENT

Prior to ordering that a defendant may be forcibly injected with anti-psychotic drugs for the sole purpose of restoring the defendant's competency to stand trial, the Court must conduct a pre-medication analysis to determine how the medication will effect defendant's demeanor at trial and his ability to assist his attorney in presenting his defense.

REASONS FOR GRANTING THE WRIT

I. The Petition should be granted to resolve the split of authority on whether a trial court must consider the effects of involuntary medication upon a defendant's right to a fair trial prior to ordering the involuntary medication of defendant.

The Eighth Circuit Court of Appeals has decided the issue of pre-medication analysis contrary to that of the Sixth Circuit Court of Appeals. Here, the Eighth Circuit Court of Appeals held that Dr. Sell's right to a fair trial was not violated because there was evidence that Dr. Sell would be able to participate meaningfully in his trial while under the influence of the medication and that the effects of the medication on his competency and demeanor could properly be considered once the medication was administered. *United States v. Sell*, 282 F.3d 560, 572 (8th Cir. 2002). For those reasons, along with the district court's

willingness to re-examine Dr. Sell's Sixth Amendment claims after the medication regimen had begun, the Eighth Circuit Court of Appeals found Dr. Sell's right to a fair trial adequately protected. *Id.* The Eight Circuit did not, however, consider the effect of the medication upon Dr. Sell's demeanor at trial.

This holding is in conflict with *United States v. Brandon*, 158 F3d. 947 (6th Cir. 1998). In *Brandon*, the Sixth Circuit held that before ordering the involuntary medicating of a defendant, the court must consider the effect of the medication upon the defendant's physical appearance at trial as well as its effects on the defendant's ability to aid in his defense. *Id.* at 955.

This Court has recognized that the involuntary administering of anti-psychotic drugs impinges upon a defendant's right to a fair trial by altering his demeanor and by interfering with his ability to assist his attorney in presenting his defense. *Riggins v. Nevada*, 504 U.S. 127, 142 (1992) (Kennedy, J., concurring). More specifically, compelling a defendant to take psychotropic medication prejudices the defendant and falsifies the jury's impression of the defendant because he may appear emotionally unresponsive, bored, nervous or restless. *Id.* at 143. Our legal system is one in which the trier of fact observes the defendant throughout the trial, whether he is testifying or sitting at counsel table. *Id.* at 142. Forcing medication upon a defendant raises many of the same concerns as if material evidence has been manipulated. *Id.* at 139.

The effect of the medication on Dr. Sell's demeanor was not addressed by the district court or the Eighth Circuit Court of Appeals but was found to be an issue that could be addressed after the medication regimen had

begun. With Dr. Sell's mental state at issue, the jury will undoubtedly observe and scrutinize his demeanor regardless of whether or not he testifies. While the medication may help to restore Dr. Sell's competency, it may at the same time alter or alleviate his symptoms which most likely would convince a jury of his diminished capacity at the time of the offense.

Given the gravity of the issue, and the conflicting holdings on the issue of pre-medication analysis, this Court should grant the petition for writ of certiorari.

CONCLUSION

The writ of certiorari should be granted.

Respectfully submitted,

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